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No. 91-453

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

DAVID H. LUCAS,

Petitioner,

v.

SOUTH CAROLINA COASTAL COUNCIL,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of South Carolina

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15.6, the Petitioner, David H. Lucas, respectfully submits this Reply to Brief in Opposition.

ARGUMENT

THIS MATTER IS RIPE FOR ADJUDICATION

Respondent, South Carolina Coastal Council, maintains (Resp. 5) that Petitioner has failed to exhaust administrative remedies available to him, and, as a consequence, this matter is not ripe for adjudication and that the Petition should be denied. More specifically,

Respondent claims that section 48-39-290(D) of the South Carolina Beachfront Management Act ("the Act"), S.C. Code Ann. § 48-39-10 *et seq.* (Law Co-op. 1990) (reprinted at Pet. App. 125) provides the Petitioner with the possibility of seeking a special permit from the South Carolina Coastal Council at any time. Petitioner maintains that this argument is without substance.

Section 48-39-290(D) of the Act was adopted on June 25, 1990, more than two years after the South Carolina Coastal Council had drawn the setback lines which prevented David H. Lucas from building on his property.[1] For the two years prior to the 1990 amendments to the Act, the Petitioner was thus without *any* administrative remedy. During this two years period, the regulatory taking of the South Carolina Coastal Council could not have been relieved by any remedy, save for judicial review. Under *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), this temporary taking suffices to defeat any assertion that a State's regulation did not ripen, for purposes of justifiability, into a compensable action. *Id.* at 314-22. *First English* modified *Agins v. Tiburon*, 447 U.S. 255 (1980), and its progeny,[2] to

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[1] Presiding Judge Patterson of the Circuit Court of Charleston County found that the South Carolina Coastal Council's regulation against building went into effect against Mr. Lucas's property sometime after July 1, 1988. *See* Pet. App. 35. Judge Patterson also found that the prohibition on the construction on Mr. Lucas's property was permanent. *See* Pet. App. 37. This finding of fact has never been disturbed on appeal.

[2] *See e.g., MacDonald, Sommer & Frates v. County of Yolo*, 477 U.S. 340 (1986); *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) (as cited at Resp. 5).

the extent those cases purported to deny review of temporary regulatory takings claims for lack of finality. *See First English*, 482 U.S. at 311-12. Mr. Lucas's case is in precisely the same posture as that of the petitioner in *First English*.[3]

And, as has already been noted (Pet. 8 n.2), the South Carolina Supreme Court, in rendering its judgment in this case of February 11, 1991, did not consider the impact of the 1990 amendment in providing administrative relief to property owners. The South Carolina Coastal Council sought to brief this issue, but this request was denied by that court. The South Carolina Supreme Court thus implicitly held that Mr. Lucas had a ripe claim for compensation under the Constitution's Fifth Amendment.

The issue of finality should not bar the Court's granting of a Petition of Certiorari in this case, if it is otherwise disposed to do so.

Respectfully submitted,

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[3] This conclusion should suffice at this stage of the proceedings. Petitioner is not prepared to concede, of course, that he suffered only a temporary taking between June 1988 and June 1990.